

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)
)
)
V.)) **CASE NO:1:07-CR-60-WKW**
)
JAMES ALLAN GIBSON)

DEFENDANT'S REQUESTED VOIR DIRE

NOW COMES the Defendant, by and through the undersigned counsel, and respectfully requests that the following questions be included in the voir dire directed to the jury at the trial of this matter.

Presumption of Innocence, Beyond a Reasonable Doubt

1. The law requires that Mr. Gibson is presumed innocent and remains innocent unless the government proves his guilt beyond a reasonable doubt. Does anyone think the law should not be that way? Why do you think that?
2. Under the American criminal justice system, a defendant is innocent unless proved guilty. Some people believe that it should be the other way around and that the defendant should prove he is innocent. Which do you think is the better system? Why? How many people think the defendant should have to prove he is innocent? Why?
3. Does anyone believe that a person facing imprisonment should have to prove himself innocent?
4. In the law, there are three common burdens of proof of which you may have heard: preponderance of evidence, clear and convincing evidence, and beyond a reasonable

doubt. Preponderance of evidence means more likely than not. It is the burden which a plaintiff seeking money damages in a civil action must prove. Clear and convincing evidence is greater than that -- it is the burden which the State of Alabama has to meet in order to take someone's children away. Beyond a reasonable doubt is a still greater burden. Does anyone believe that the government should be able to convict and imprison a person based upon proof where there is reasonable doubt? Why?

5. Do you have any objection to the statement of law that the indictment in this case is not evidence and should not be considered by you as evidence and it is only the procedure by which one is brought to trial and the fact that an indictment has been returned is not evidence of guilt on behalf of the defendant whatsoever?

6. Do each of you agree with the law which presumes that the defendant is innocent as he sits in this courtroom today and until such time as the government proves its case beyond a reasonable doubt?

Protection against Self-Incrimination

7. In a criminal case, a defendant is not required to testify, and if the defendant does not testify, jurors are not supposed to draw any conclusions from that fact. Does the idea that you might not hear from the defendant disturb you? Why? Would you expect the defendant to testify? Why?

8. Do you think it would be better if the defendant was required to testify? Why?

9. Do you think you will need to hear both sides before you can make up your mind? Why? Do you understand that under the law, the defendant is not required to testify

or even present his "side" and that you might be required to render a verdict of not guilty if the government did not prove its case beyond a reasonable doubt, even if the defendant did not testify, or offer evidence in his defense? Are any of you uncomfortable with that idea?

10. Do you agree with the law that the burden of proving that the defendant is guilty beyond a reasonable doubt rests with the prosecution?

11. Would you require in your own mind that the Defendant prove his innocence to you before you would acquit him?

12. Would you hold it against him if he did not testify?

13. Do you agree with the fact that the law does not require him to testify?

Jury Deliberations

14. Do you agree that you are bound to reach a verdict solely on the evidence introduced during the trial?

15. Do you agree that you are enforcing the law just as vigorously by voting for acquittal, if there is a reasonable doubt as to guilt, as you do by voting for conviction when there is no such doubt?

16. Would you give the accused the benefit of your individual judgment in arriving at a verdict in this case?

17. Does the fact that the Mr. Gibson has a prior felony conviction tend to make you believe that he most likely committed the crime charged in this case?

18. If you came to the conclusion that the prosecution had not proven Mr. Gibson guilty beyond a reasonable doubt, and you found that a majority of the jurors believed he was

guilty, would you change your verdict in order to reach a unanimous decision?

19. Are you able to deliberate with your fellow jurors and still vote according to your own, individual assessment of what the evidence shows, even if others disagree with you?

Jurors' knowledge of witnesses or prosecutors

19. Do you understand that the comments of the prosecutor are not evidence in this case?

20. Do any of you know anything about the facts of this case?

21. Does any member of the jury venire know any of the following people? (We ask the Court to read a list of the Government's proposed witnesses).

22. Are any of you related to anyone on the staff of the United States Attorney?

23. Does any member of the jury venire know any member of the United States Attorney's Office and its investigators? (We ask the Assistant United States Attorney to please stand and give with clarity the name of each member of the U.S. Attorney's Office, including investigators)

Opinions about or Ties to Law Enforcement

24. Do any of you know any law enforcement officer, either in local, state or federal or military law enforcement? If so, please state the extent of the relationship and the police agency involved..

25. Do any of you have family ties with police or law enforcement persons? If so, please state the relationship and the law enforcement agency involved.

26. Who, if anyone thinks that the testimony of a law enforcement agent in a criminal case is more deserving of belief than the testimony of a non-law enforcement person, simply because the person testifying is a law enforcement officer? Why do you think so? Do any of you think that the testimony of a law enforcement agent is less deserving of belief than that of non-law enforcement persons, simply because the person is in law enforcement? Why do you think so?

27. Have any of you ever or any member of your family or any of your friends ever had any contact with any law enforcement in the area? Please tell us about that contact. If you would prefer, you may discuss the matter in private at the bench.

28. Have any of you received any training or taken any classes in Law? If your answer is yes, briefly describe the nature of that training.

29. Have you ever been a witness for the prosecution in a criminal case? Please explain.

Gun Ownership

30. If you own a firearm, raise your hand.

31. If any of your adult children own a firearm, raise your hand.

32. If you own more than one firearm, raise your hand.

Mere Proximity

33. Are there any of you who think if a person is in “the wrong place” at the “wrong time,” he must be guilty of something? Do any of you believe a person should be held responsible for the actions of his acquaintances?

Respectfully submitted,

s/Christine A. Freeman
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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Matthew Shepherd, Esquire, Assistant United States Attorney.

s/Christine A. Freeman
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